

Texas Department of Health

Bureau of HIV & STD Prevention

September 30, 1994

Rev. September 28, 2000

HIV/STD Policy No. 590.001

WAIVER OF MEDICAID PROVIDER PROVISION

PURPOSE

Performing agencies who contract for funds with the Texas Department of Health (TDH) are required to become a Medicaid provider for applicable program activities unless the performing agency requests and receives a waiver of this requirement from the Division (the HIV/STD Health Resources Division) authorizing the contract (Reference: Article 10. Standards For Financial and Programmatic Management, General Provisions). This policy outlines the waiver application process. A waiver will be granted if the performing agency provides adequate rationale that implementing this requirement would result in a substantial detriment to the health of a client with HIV/AIDS.

This policy does not apply to agencies licensed as "Special Care Facilities" or "Special Care Hospitals."

It is the responsibility of the performing agency to comply with applicable laws, policy and conditions of funding. Current Medicaid providers must comply with provisions of the Medicaid billing policy. Questions regarding these policies should be directed to the Provider Enrollment Section of the National Heritage Insurance Company (NHIC), 11044 Research Boulevard, Building C, Austin, Texas 78759-5239.

DEFINITIONS

The TDH, Bureau of Licensing and Certification, Health Facility Licensure and Certification Division, defines "Special Care Facility" and "Special Care Hospital" as:

! Special care facility - An institution or establishment that provides a continuum of nursing or medical care or services primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The term includes a special residential care facility.

! Special residential care facility - A residential facility required to obtain a special care facility license under the Act (Texas Special Care Facility Licensing Act, Health and Safety Code, Chapter 248).

! Special Care Hospital - An establishment that:

(A) offers services, facilities and beds for use for more than 24 hours to two or more unrelated individuals who are regularly admitted, treated and

- 1 discharged and who require services more intensive than room, board,
- 2 personal services, and general nursing care;
- 3 (B) has clinical laboratory facilities, X-ray facilities, treatment facilities, or
- 4 other definitive medical treatment;
- 5 (C) has a medical staff in regular attendance; and
- 6 (D) maintains records of the clinical work performed for each patient.

7 HOW TO REQUEST

8 The Administrative Agency is responsible for facilitating a waiver request in the
 9 Division approved format (HIV/STD Form No. 590.001-A) for current and proposed
 10 contractors who provide services as defined by the Medicaid program. The Performing
 11 Agency is responsible for initiating the waiver request to the Administrative Agency.
 12 All requests for waivers must be approved by the Consortium in the Division approved
 13 format (HIV/STD Form No. 590.001-B). The Administrative Agency will submit both
 14 completed forms to the HIV/STD Health Resources Division for approval.

15 **A waiver approved by the HIV/STD Health Resources Division is valid until**
 16 **revoked or until a new waiver application is requested provided the Performing**
 17 **Agency's contractual status for HIV services has continued uninterrupted. A new**
 18 **waiver application must be submitted if the Performing Agency's contractual**
 19 **relationship has been severed or interrupted for any reason.**

20 The Division grants automatic, unconditional waivers to agencies licensed as "Special
 21 Care Facilities" or "Special Care Hospitals." Agencies with such licensing agreements
 22 need not submit a request for waiver to their respective Consortium nor the TDH.

23 CRITERIA FOR EXEMPTION

24 All waiver requests must be submitted in writing using HIV/STD Form 590.001-A.
 25 Verbal requests will not be considered. The Division will grant an approval of waiver
 26 for the Medicaid provider provision should the Performing Agency successfully prove
 27 that implementing this requirement would result in a loss of critical HIV/AIDS services
 28 to the community or would result in a substantial detriment to the health of a client with
 29 HIV/AIDS, or the Performing Agency certifies their intent to comply with the Medicaid
 30 provider provision.

31 The Performing Agency must certify that at least one of the following three conditions
 32 exist:

- 33 1. Enforcement of the Medicaid Provider Provision would result in a loss of critical
 34 HIV/AIDS services to the community. It would be unreasonable to require the
 35 Performing Agency to become a Medicaid provider, in that the Performing
 36 Agency;

- 37 ! Does not have eligible Medicaid clients in their client base as of the
 38 effective date of the contract, or

1 ! Has an insufficient number of and/or an insufficient demand by eligible
2 Medicaid clients to warrant becoming a Medicaid provider.

3 2. Present Medicaid constraints would present significant barriers to compliance,
4 in that the Performing Agency;

5 ! Has applied and meets Medicaid standards for Medicaid provider
6 approval, but has determined that costs associated with implementing
7 Medicaid provider status would be detrimental to the viability of the
8 organization, or

9 ! Has applied and does not meet Medicaid provider standards for approval
10 but is licensed to provide the contracted level of care. (Provider must
11 provide documentation indicating why Medicaid provider status was
12 denied.)

13 3. Intends to comply with the Medicaid provider provision within six months from
14 the date of certification, in that the Performing Agency;

15 ! Has applied for Medicaid Provider Enrollment and is awaiting NHIC
16 approval, or

17 ! Will apply for Medicaid Provider Enrollment with the NHIC.

18 The Consortium approval must be submitted in writing using HIV/STD Form 590.001-B.
19 The Division will grant an approval of waiver for the Performing Agency should the
20 Consortium certify that one of the following situations exist:

- 21 1. The HIV/AIDS infected population does not have a viable, alternative service
- 22 available in the community; or
- 23 2. The HIV/AIDS infected population has determined that a change of provider
- 24 would be detrimental to their health and well being; or
- 25 3. The Performing Agency intends to comply with the Medicaid provider provision
- 26 within six months from the date of the Performing Agency's certification.

27 The Consortium is responsible for certifying that a special situation exists and for
28 directing the Administrative Agency to initiate the waiver process with the TDH. A copy
29 of all waiver requests filed with the Consortium must be maintained on file with the
30 Administrative Agency in the appropriate Performing Agency contract file and made
31 available to the Division upon request.

32 DOCUMENTATION

33 The Performing Agency is required to maintain supporting documentation on file which
34 justifies their request for a waiver under this policy. All supporting documentation must
35 be made readily available for inspection by the TDH or this authorized representative.
36 Failure to provide supporting documentation upon request may result in an immediate
37 revocation of a waiver granted under this policy.

In the event the supporting documentation is reviewed by the TDH and is found to be non-substantiating of the exemption request filed by the Performing Agency, the TDH may request additional information. When the additional information submitted by the Performing Agency does not substantiate the exemption request, the TDH may revoke a waiver granted under this policy.

REVIEW PROCESS

The Division will review a request for a waiver of this requirement on a case by case basis and will determine whether to grant a waiver based on the criteria for exemption. The Division will determine the appropriateness of a waiver within ten (10) working days of the date received. When a waiver is not granted, the Division, in consultation with the Administrative Agency, will determine if the contract/subcontracts may be fully executed, continued, or terminated. The Division may impose conditions of award to pursue Medicaid provider status.

REVISIONS (Last reviewed September 8, 2000.)

<p>Page 2, Line 8 - 11</p>	<p>deleted “A waiver is valid for the term of the project period only and must be reapplied for annually.”</p> <p>Inserted new paragraph to extend approved waivers until revoked or until a new waiver application is requested provided the Performing Agency’s contractual status for HIV services has continued uninterrupted.</p>
<p>Page 3, Line 29</p>	<p>deleted “A waiver is valid for the term of the project period only.”</p>
<p>Form 590.001-C, Line 5</p>	<p>deleted “A waiver is valid for the term of the project period only.”</p>

WAIVER OF MEDICAID PROVIDER PROVISION
EXEMPTION REQUEST

I the undersigned, acting on behalf of the Performing Agency, certify that at least one of the following three conditions exist:

1. Enforcement of the Medicaid Provider Provision would result in a loss of critical HIV/AIDS services to the community. It would be unreasonable to require the Performing Agency to become a Medicaid provider, in that the Performing Agency;

☐ Does not have eligible Medicaid clients in their client base as of the effective date of the contract, or

☐ Has an insufficient number of and/or an insufficient demand by eligible Medicaid clients to warrant becoming a Medicaid provider.

2. Present Medicaid constraints would present significant barriers to compliance, in that the Performing Agency;

☐ Has applied and meets Medicaid standards for Medicaid provider approval, but has determined that costs associated with implementing Medicaid provider status would be detrimental to the viability of the organization, or

☐ Has applied and does not meet Medicaid provider standards for approval but is licensed to provide the contracted level of care. (Provider must provide documentation indicating why Medicaid provider status was denied.)

3. Intends to comply with the Medicaid provider provision within six months from the date of certification, in that the Performing Agency;

☐ Has applied for Medicaid Provider Enrollment on (date of application) ____/____/____ and is awaiting NHIC approval, or

☐ Will apply for Medicaid Provider Enrollment with the NHIC on or before (date) ____/____/____.

Submitted on behalf of (Performing Agency):

Signed by (Authorized Agent/Title):

Address: _____

Title: _____

Date: ____/____/____

Please submit this form to your administrative agency.

**WAIVER OF MEDICAID PROVIDER PROVISION
CONSORTIUM APPROVAL**

We, the Consortium, certify that the statements filed by the Performing Agency are true to our knowledge and that one of the following three situations exist:

1. ☐ The HIV/AIDS infected population does not have a viable, alternative service available in the community; or
2. ☐ The HIV/AIDS infected population has determined that a change of provider would be detrimental to their health and well being; or
3. ☐ The Performing Agency intends to comply with the Medicaid provider provision within six months from the date of the Performing Agency's certification.

After consideration of the above statements and attached documentation (if any), the Consortium:

- ☐ directs the Administrative Agency to initiate the waiver process with the TDH, or
- ☐ denies approval for the Administrative Agency to initiate the waiver process with the TDH.

Signed by (Consortium Chair):
Administrative Agency):

Signed by (Authorized Agent of

Date: ____ / ____ / ____
/ ____

Date: ____ / ____

** The Consortium is responsible for certifying that a special situation exists and for directing the Administrative Agency to initiate the waiver process with the TDH. A copy of all waiver requests filed with the Consortium must be maintained on file with the Administrative Agency in the appropriate Performing Agency contract file and made available to the Division upon request.*

Please submit this form along with completed Form 590.001-A, Waiver of Medicaid Provider Provision, Exemption Request. Send forms to:
 Division Director, HIV/STD Health Resources Division
 Bureau of HIV and STD Prevention
 Texas Department of Health
 1100 West 49th Street
 Austin, TX 78756-9987

WAIVER OF MEDICAID PROVIDER PROVISION
 EXEMPTION REVIEW PROCESS

The Division will review a request for a waiver of this requirement on a case by case basis and will determine whether to grant a waiver based on the criteria for exemption. The Division will determine the appropriateness of a waiver within ten (10) working days of the date received. If a waiver is not granted, the Division, in consultation with the Administrative Agency, will determine if the contract/subcontracts may be fully executed, continued, or terminated. The Division may impose conditions of award to pursue Medicaid provider status.

☐ Approved without conditions. Term of project period ____ / ____ / ____ through ____ / ____ / ____.

☐ Approved with conditions. Term of project period ____ / ____ / ____ through ____ / ____ / ____.

☐ Denied.

 / _____
 Director, HIV/STD Health Resources Division Date

Conditions:

1

For Texas Department of Health use only.